



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 7

SYNNESTVEDT & LECHNER
2600 ARAMARK TOWER
1101 MARKET STREET
PHILADELPHIA, PA 19107

COPY MAILED

OCT 08 2002

OFFICE OF PETITIONS

In re Application of
Phillip Edwards, Bradley Levin,
Michael O'Toole, Joseph Vandenberg,
and Lee Xu
Application No. 10/034,792
Filed: December 27, 2001
Title: TRANSCEIVER FOR LC CONNECTOR:

DECISION REFUSING STATUS
UNDER 37 C.F.R. § 1.47(a)

This is a decision on the petition under § 1.47, filed July 16, 2002, to accept a declaration without the signatures of joint inventors Bradley Levin and Joseph Vandenberg.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 27, 2001, without an executed oath or declaration. Accordingly, on February 7, 2002, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application," requesting an executed oath or declaration and late surcharge under § 1.16(e). In reply on July 16, 2002, (certificate of mailing Monday, July 8, 2002) petitioner filed the instant petition, made timely by an accompanying petition for an extension of time for response within the second month (and fee); along with a declaration executed by inventors Edwards, O'Toole and Xu on behalf of themselves and on behalf of non-signing inventors Levin and Vandenberg. Petitioners assert that status under § 1.47 is proper because inventors Levin and Vandenberg refuse to and/or are unavailable to execute the declaration and power of attorney documents.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition is deficient because applicants

have not provided adequate proof of the unavailability of the non-signing inventors.

Rule 47 applicants have failed to show that the non-signing inventors refused to sign the declaration after having been presented with the application papers. Before a refusal can be alleged, applicants must demonstrate that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). A careful review of the petition reveals that it only shows that the inventors were presented with the declaration and power of attorney documents. Thus, on renewed petition, applicants must establish that the entire application package, including specification, claims and drawings, was presented to the non-signing inventors and they each refused to sign. A copy of the application papers should be sent by certified mail return-receipt requested to the last known address of each of the non-signing inventors, or, if the inventors are represented by counsel, to the address of each non-signing inventor's attorney. On renewed petition, documentary evidence, including copies of the transmittal cover letters and return mail receipts, should be made part of the record.

It is further noted that if petitioner's contention is that these inventors cannot be reached or found to join in the application. Diligent efforts to locate them must be shown. The instant petition does not reflect diligent effort. If reasonable attempts to obtain forwarding addresses or to locate the non-signing inventors by other means such as through E-mail, or the Internet fail, then applicants will have provided the necessary proof required under 37 CFR 1.47 that the inventors cannot be reached or found after diligent effort. Details of the efforts to locate the non-signing inventors should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicants should also submit documentary evidence such as the results of any E-mail or Internet searches.

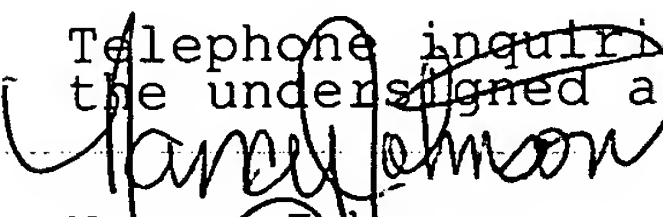
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions
ATTN: NANCY JOHNSON

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza Four, Suite 3C23
Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy